

SIXTY-SEVENTH DAY
(Wednesday, May 9, 1979)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Andujar, Blake, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Harris, Howard, Jones of Harris, Jones of Taylor, Kothmann, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Parker, Patman, Price, Santiesteban, Schwartz, Short, Snelson, Traeger, Truan, Vale, Williams.

A quorum was announced present.

Chaplain Gerald Mann, University Baptist Church, Austin, offered the invocation as follows:

Lord, remind us today that the Devil is a gentleman who never goes where he's not welcome. Amen.

On motion of Senator Moore and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

House Chamber
May 9, 1979

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I AM DIRECTED BY THE HOUSE TO INFORM THE SENATE THAT THE HOUSE HAS PASSED THE FOLLOWING:

HCR 96, Designating every fourth Friday in June as Fink Day in Texas.

All necessary rules suspended, and the House concurred in Senate amendments to House Bill No. 1163 by a non record vote.

All necessary rules suspended, and the House concurred in Senate amendments to House Bill No. 20 by a non record vote.

All necessary rules suspended, and the conference committee report on Senate Bill No. 116 adopted by a non record vote.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

BILLS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills:

S.B. 156
S.B. 259
S.B. 288
S.B. 387
S.B. 586
S.B. 1225
S.B. 1257

REPORTS OF STANDING COMMITTEES

Senator Mauzy submitted the following report for the Committee on Education:

H.B. 1286
H.B. 1069
S.B. 412
H.B. 1575
S.B. 1290
H.B. 980
C.S.S.B. 903 (Read first time)
C.S.H.B. 779 (Read first time)
H.B. 455
S.B. 1178 (Amended)
C.S.S.B. 566 (Read first time)
C.S.H.B. 508 (Read first time)

Senator Snelson submitted the following report for the Committee on Intergovernmental Relations:

H.B. 1491
H.B. 874
H.B. 2154
S.B. 1268
H.B. 2161
H.B. 1453
H.B. 1590
S.B. 1273
S.B. 473
S.B. 1271
S.B. 660
S.B. 212 (Amended)
S.B. 429
H.B. 1787 (Amended)
C.S.S.B. 969 (Read first time)
H.B. 284
C.S.H.B. 1662 (Read first time)
C.S.S.B. 1292 (Read first time)

SENATE BILLS ON FIRST READING

On motion of Senator Longoria and by unanimous consent, the following bills were introduced, read first time and referred to the Committee indicated:

S.B. 1308 by Price Intergovernmental Relations
Relating to the creation of a juvenile board in each of the counties of Wheeler, Hemphill, Roberts, and Lipscomb and providing for juvenile officers.

S.B. 1311 by Longoria Jurisprudence
Relating to the penalties for offenders who use a firearm during the commission of an offense.

S.B. 1312 by Longoria Jurisprudence
Relating to the penalty for the manufacture or sale of certain drugs in violation of the Texas Controlled Substances Act.

S.B. 1313 by Longoria Jurisprudence
Relating to the penalties for offenders who use a firearm during the commission of an offense.

S.B. 1314 by Longoria Jurisprudence
Relating to the application of the statute of limitations to sums or property required to be reported and paid to the State Treasurer's Office under the escheat statutes.

S.B. 1315 by Longoria Jurisprudence
Relating to penalties for repeat and habitual offenders.

HOUSE RESOLUTION ON FIRST READING

The following resolution received from the House was read the first time and referred to the Committee indicated:

H.C.R. 191, To Committee on Natural Resources.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 43 ADOPTED

Senator Traeger called from the President's table the Conference Committee Report on **S.B. 43**. (The Conference Committee Report having been filed with the Senate and read on Tuesday, May 8, 1979.)

On motion of Senator Traeger, the Conference Committee Report was adopted.

RECORD OF VOTE

Senator Farabee asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

HOUSE BILL 1974 REREFERRED

On motion of Senator Snelson and by unanimous consent, **H.B. 1974** was withdrawn from the Committee on Intergovernmental Relations and rereferred to the Committee on Natural Resources.

HOUSE BILL 1794 REREFERRED

On motion of Senator Snelson and by unanimous consent, **H.B. 1794** was withdrawn from the Committee on Natural Resources and rereferred to the Committee on Intergovernmental Relations.

HOUSE BILL 616 ON THIRD READING

Senator Farabee moved to suspend the regular order of business to take up on its third reading and final passage:

H.B. 616, Amending Subsection (1) of Article 1.06, Title 79, Revised Civil Statutes of Texas 1925 (Article 5069-1.06, Vernon's Texas Civil Statutes) providing for forfeiture of certain interest charges and declaring an emergency.

The motion prevailed by the following vote: Yeas 21, Nays 5.

Yeas: Andujar, Blake, Braecklein, Brooks, Creighton, Farabee, Harris, Howard, Jones of Harris, Kothmann, Longoria, McKnight, Meier, Mengden, Parker, Schwartz, Short, Snelson, Traeger, Vale, Williams.

Nays: Clower, Doggett, Mauzy, Patman, Truan.

Absent: Jones of Taylor, Moore, Ogg, Price, Santiesteban.

The bill was read third time.

Senator Patman offered the following amendment to the bill:

Amend Section 1 of HB 616 by striking all after the word "follows" on line 9 and substituting:

"(1) Any person who contracts for, charges, or receives interest which is greater than the amount authorized by this Subtitle shall forfeit to the obligor twice the amount of interest contracted for, charged or received, and reasonable attorney fees fixed by the court. However, on loans for which the term exceeds ten years, the amount forfeited shall be three times the amount of usurious interest contracted for, charged or received, and reasonable attorney fees fixed by the court. There shall be no penalty for ~~a violation~~ any usurious interest which results from an accidental and bona fide error."

The amendment was read.

On motion of Senator Farabee, the amendment was tabled by the following vote: Yeas 25, Nays 6.

Yeas: Andujar, Blake, Braecklein, Brooks, Creighton, Farabee, Harris, Howard, Jones of Harris, Jones of Taylor, Kothmann, Longoria, McKnight, Meier, Mengden, Moore, Ogg, Price, Santiesteban, Schwartz, Short, Snelson, Traeger, Vale, Williams.

Nays: Clower, Doggett, Mauzy, Parker, Patman, Truan.

The bill was then finally passed by the following vote: Yeas 25, Nays 6. (Same as previous roll call)

**COMMITTEE SUBSTITUTE SENATE BILL 378
ON SECOND READING**

Senator Andujar moved to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 378, Relating to the regulation of insurance premium finance companies; providing penalties.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Andujar, Blake, Braecklein, Brooks, Creighton, Farabee, Harris, Howard, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Meier, Mengden, Moore, Ogg, Parker, Price, Schwartz, Short, Snelson, Traeger, Williams.

Nays: Clower, Doggett, Longoria, Mauzy, Patman, Santiesteban, Truan, Vale.

The bill was read second time and was passed to engrossment.

RECORD OF VOTE

Senator Truan asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

MOTION TO PLACE COMMITTEE SUBSTITUTE SENATE BILL 378 ON THIRD READING

Senator Andujar moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 378** be placed on its third reading and final passage.

The motion was lost by the following vote (Not receiving four-fifths vote of the Members of the Senate present): Yeas 22, Nays 9.

Yeas: Andujar, Blake, Braecklein, Brooks, Creighton, Farabee, Harris, Howard, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Meier, Mengden, Moore, Ogg, Parker, Price, Short, Snelson, Traeger, Williams.

Nays: Clower, Doggett, Longoria, Mauzy, Patman, Santiesteban, Schwartz, Truan, Vale.

SENATE BILL 1301 ON SECOND READING

On motion of Senator Blake and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1301, Making an appropriation for repair of the Texas State Railroad. (Submitted by Governor as an emergency)

The bill was read second time and was passed to engrossment.

SENATE BILL 1301 ON THIRD READING

Senator Blake moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1301** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE RULE 103 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Natural Resources might consider the following bills:

H.B. 1857

H.B. 1858

SENATE BILL 828 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 828, Relating to the regulation of adult day care and adult day health care programs.

The bill was read second time and was passed to engrossment.

SENATE BILL 828 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 828** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE JOINT RESOLUTION 35 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.J.R. 35, Proposing a constitutional amendment permitting the Legislature to authorize banks to use unmanned teller machines within the county or the city of their domicile, on a shared basis, to serve the public convenience.

The resolution was read second time.

Senator Harris offered the following committee amendment to the resolution:

Amend SJR 35 by striking the last sentence of Section 1 and substituting the following:

“Banks may be required by the legislature to share the use of such machines within the county or city of their domicile with savings and loan associations and/or credit unions which are domiciled in the same county or city.”

The committee amendment was read and was adopted.

Senator Harris offered the following amendment to the resolution:

Amend **S.J.R. 35** by filling in the blank on line 58, page 1 of the S.J.R., the figures 1979.

The amendment was read and was adopted.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

The resolution as amended was passed to engrossment.

SENATE JOINT RESOLUTION 35 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.J.R. 35** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 585 ON SECOND READING

Senator Jones of Harris moved to suspend the regular order of business to take up for consideration at this time:

H.B. 585, Relating to jurisdiction of the Public Utility Commission over electric utility rates, operations, and services.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Andujar, Brooks, Creighton, Farabee, Howard, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Mengden, Moore, Ogg, Parker, Price, Santiesteban, Schwartz, Snelson, Truan, Vale, Williams.

Nays: Blake, Braecklein, Clower, Doggett, Harris, Longoria, Mauzy, Meier, Patman, Traeger.

Absent: Short.

The bill was read second time.

Senator Clower offered the following amendment to the bill:

Amend **H.B. 585** by adding the following sentence to SECTION 1 thereof at Line 13 after the word "systems":

Provided, the Commission shall not have such exclusive original jurisdiction over rates, operations and service of electric utilities within the corporate limits of any municipality of over 20,000 according to the last preceding federal census.

The amendment was read.

Question - Shall the amendment be adopted?

RECESS

On motion of Senator Parker the Senate at 12:10 o'clock p.m. took recess until 1:30 o'clock p.m. today.

AFTER RECESS

The Senate met at 1:30 o'clock p.m. and was called to order by the President.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on State Affairs, Subcommittee on Nominations:

Austin, Texas
May 9, 1979

TO THE SENATE OF THE SIXTY-SIXTH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TRINITY RIVER AUTHORITY OF TEXAS:

For a six-year term to expire March 15, 1985:

MR. JOHN G. MIDDLETON of Wallisville, Chambers County, is replacing Mr. Everett Champ Clark of Mont Belvieu, Chambers County, whose term expired.

TO BE A MEMBER OF TEXAS COMMISSION ON THE ARTS AND HUMANITIES:

For a six-year term to expire August 31, 1983:

MRS. MARGOT BIRMINGHAM PEROT of Dallas, Dallas County, is replacing Mrs. Elizabeth Guiberson of Dallas, Dallas County, whose term expired.

TO BE A MEMBER OF THE PARKS AND WILDLIFE COMMISSION:

For a six-year term to expire February 1, 1985:

MR. WILLIAM BYRON OSBORN, JR. of Santa Elena, Starr County, is replacing John M. Green of Beaumont, Jefferson County, whose term expired.

TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NUECES RIVER AUTHORITY:

For a six-year term to expire February 1, 1985:

MR. GENE GARRISON of Alice, Jim Wells County, is replacing Mr. John Burris of Alice, Jim Wells County, whose term expired.

TO BE A MEMBER OF THE TEXAS DEEPWATER PORT AUTHORITY:

For a six-year term to expire January 31, 1985:

MR. RAI BENSON KELSO of Galveston, Galveston County, is replacing Mr. Pete S. Miller of Galveston, Galveston County, whose term expired.

Respectfully submitted,

/s/W. P. Clements, Jr.
Governor of Texas

HOUSE BILL 585 ON SECOND READING

The Senate resumed consideration of **H.B. 585** on its second reading and passage to third reading with an amendment by Senator Clower pending.

Question - Shall the pending amendment be adopted?

Senator Longoria offered the following amendment to the pending amendment:

Amend Amendment No. 1 by striking the figure \$20,000 where it appears and inserting in lieu thereof \$10,000.

The amendment to the pending amendment was read.

On motion of Senator Doggett the amendment to the pending amendment was tabled by the following vote: Yeas 16, Nays 12.

Yeas: Andujar, Brooks, Howard, Jones of Harris, Jones of Taylor, Kothmann, Mengden, Moore, Ogg, Parker, Santiesteban, Schwartz, Snelson, Truan, Vale, Williams.

Nays: Blac, Braecklein, Clower, Doggett, Farabee, Longoria, Mauzy, Meier, Patman, Price, Short, Traeger.

Absent: Creighton, Harris, McKnight.

Question recurring on the adoption of the pending amendment, the pending amendment by Senator Clower failed of adoption by the following vote: Yeas 12, Nays 19.

Yeas: Blake, Braecklein, Clower, Doggett, Farabee, Longoria, Mauzy, Meier, Patman, Price, Short, Traeger.

Nays: Andujar, Brooks, Creighton, Harris, Howard, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Mengden, Moore, Ogg, Parker, Santiesteban, Schwartz, Snelson, Truan, Vale, Williams.

Question - Shall the bill be passed to third reading?

MESSAGE FROM THE HOUSE

House Chamber
May 9, 1979

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I AM DIRECTED BY THE HOUSE TO INFORM THE SENATE THAT THE HOUSE HAS PASSED THE FOLLOWING:

S.C.R. 71 Granting permission for the planting of memorial tree in memory of Roy Grimes

HCR 92, Urging President Carter to establish official government relations with the Republic of China.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILL ON FIRST READING

On motion of Senator Moore and by unanimous consent, the following bill was introduced, read first time and referred to the Committee indicated:

S.B. 1317 by Moore State Affairs
Relating to the conducting and financing of ceremonies and events for the inauguration of the governor and lieutenant governor.

BILLS AND RESOLUTION SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolution:

H.C.R. 96

H.B. 20

H.B. 1163

HOUSE BILL 585 ON SECOND READING

The Senate resumed consideration of **H.B. 585** on its second reading and passage to third reading.

Question - Shall the bill be passed to third reading.?

Senator Traeger offered the following amendment to the bill:

Amend Section 1 of **H.B. 585** by inserting after the word "commission" at line 50, Section 18A(f), the words "or its designated hearing examiner".

The amendment was read.

On motion of Senator Jones of Harris, the amendment was tabled by the following vote: Yeas 18, Nays 12.

Yeas: Andujar, Braecklein, Brooks, Creighton, Howard, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Meier, Mengden, Moore, Ogg, Parker, Snelson, Truan, Vale, Williams.

Nays: Blake, Clower, Doggett, Farabee, Harris, Longoria, Mauzy, Patman, Price, Santiesteban, Short, Traeger.

Absent: Schwartz.

Senator Clower offered the following amendment to the bill:

Amend **H.B. 585** by adding the following sentence to SECTION 1 thereof at Line 19 after the word "systems":

Provided, the Commission shall not have such exclusive original jurisdiction over rates, operations and service of electric utilities within the corporate limits of any municipality of over 50,000 according to the last preceding federal census.

The amendment was read and failed of adoption by the following vote: Yeas 11, Nays 19.

Yeas: Blake, Bracklein, Clower, Doggett, Farabee, Longoria, Mauzy, Patman, Price, Short, Traeger.

Nays: Andujar, Brooks, Creighton, Harris, Howard, Jones of Harris, Kothmann, McKnight, Meier, Mengden, Moore, Ogg, Parker, Santiesteban, Schwartz, Snelson, Truan, Vale, Williams.

Absent: Jones of Taylor.

(Senator Andujar in Chair)

Senator Traeger offered the following amendment to the bill:

Amend **H.B. 585** by adding a new section (g) to read as follows:

(g) No provision of this bill shall be effective until September 1, 1980.

The amendment was read and failed of adoption by the following vote: Yeas 14, Nays 17.

Yeas: Blake, Bracklein, Clower, Doggett, Farabee, Longoria, Mauzy, Meier, Patman, Price, Santiesteban, Short, Snelson, Traeger.

Nays: Andujar, Brooks, Creighton, Harris, Howard, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Mengden, Moore, Ogg, Parker, Schwartz, Truan, Vale, Williams.

(President in Chair)

Senator Doggett offered the following amendment to the bill:

Amend **H.B. 585** by adding a new Section 2 as follows and renumbering the subsequent sections accordingly:

SECTION 2. Section 43(c), Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) If the regulatory authority fails to make its final determination of rates within 150 [90] days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in

excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

The amendment was read and failed of adoption by the following vote: Yeas 14, Nays 17.

Yeas: Blake, Braecklein, Clower, Doggett, Longoria, Mauzy, Meier, Parker, Patman, Price, Short, Snelson, Traeger, Truan.

Nays: Andujar, Brooks, Creighton, Farabee, Harris, Howard, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Mengden, Moore, Ogg, Santiesteban, Schwartz, Vale, Williams.

(Senator Creighton in Chair)

Senator Traeger offered the following amendment to the bill:

Amend **H.B. 585** by adding the following sentence to SECTION 1 thereof at Line 13 after the word "systems":

In the exercise of such exclusive original jurisdiction over electric utility rates the Commission shall, within 30 days after adoption of this act, redetermine and order into effect rates for all electric utilities based on current federal income tax rates.

The amendment was read.

Senator Jones of Harris moved to table the amendment.

The motion to table was lost by the following vote: Yeas 13, Nays 18.

Yeas: Brooks, Creighton, Harris, Jones of Harris, Jones of Taylor, McKnight, Moore, Ogg, Parker, Santiesteban, Schwartz, Vale, Williams.

Nays: Andujar, Blake, Braecklein, Clower, Doggett, Farabee, Howard, Kothmann, Longoria, Mauzy, Meier, Mengden, Patman, Price, Short, Snelson, Traeger, Truan.

Question - Shall the amendment by Senator Traeger be adopted?

(President in Chair)

Senator Jones of Harris raised the Point of Order that the amendment was not germane to the bill.

The President sustained the Point of Order.

Senator Clower offered the following amendment to the bill:

Amend **H.B. 585** by adding the following sentence to SECTION 1 thereof at Line 19 after the word "systems":

Provided, the Commission shall not have such exclusive original jurisdiction over rates, operations and service of electric utilities within the corporate limits of any municipality which shall adopt a resolution with 60 days of the effective date of this amendment to the Public Utility Regulatory Act indicating its intent to retain such original jurisdiction.

The amendment was read.

On motion of Senator Jones of Harris, the amendment was tabled by the following vote: Yeas 18, Nays 11.

Yeas: Andujar, Brooks, Creighton, Harris, Howard, Jones of Harris, Kothmann, McKnight, Mengden, Moore, Ogg, Parker, Santiesteban, Schwartz, Snelson, Truan, Vale, Williams.

Nays: Blake, Clower, Doggett, Farabee, Longoria, Mauzy, Meier, Patman, Price, Short, Traeger.

Absent: Braecklein, Jones of Taylor.

Senator Traeger offered the following amendment to the bill:

Amend **H.B. 585** by adding the following language after the word "section" appearing at the end of Subsection (f) of Section 18A:

"Additionally, each time an electric utility subject to the requirements of this section files with the commission a statement of intent to make changes in its rates, such utility shall provide individual written notice to each of its ratepayers (and such notice may be included as a part of the utility's regular billings for service) of its intent to make changes in its rates; and such notice shall be provided to each ratepayer at least 35 days prior to the effective date of the proposed change in rates.

The amendment was read.

Senator Jones of Harris moved to table the amendment.

The motion to table was lost by the following vote: Yeas 14, Nays 17.

Yeas: Andujar, Brooks, Creighton, Harris, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Mengden, Moore, Ogg, Schwartz, Vale, Williams.

Nays: Blake, Braecklein, Clower, Doggett, Farabee, Howard, Longoria, Mauzy, Meier, Parker, Patman, Price, Santiesteban, Short, Snelson, Traeger, Truan.

Question recurring on the adoption of the amendment, the amendment was adopted by the following vote: Yeas 16, Nays 15.

Yeas: Blake, Braecklein, Clower, Doggett, Farabee, Howard, Longoria, Mauzy, Meier, Ogg, Patman, Price, Short, Snelson, Traeger, Truan.

Nays: Andujar, Brooks, Creighton, Harris, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Mengden, Moore, Parker, Santiesteban, Schwartz, Vale, Williams.

Senator Traeger offered the following amendment to the bill:

Amend Section 1 of **H.B. 585** by inserting after the word "proposed" at line 22, Section 18A(f), the word "major".

The amendment was read.

On motion of Senator Traeger and by unanimous consent, the amendment was withdrawn.

Senator Doggett offered the following amendment to the bill:

Amend **H.B. 585** by renumbering the existing Section 2 as Section 12, adding a new Section 2 and additional Sections 3, 4, 5, 6, 7, 8, 9, 10, & 11 as follows:

SECTION 2. The Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Sections 92 through 97 to read as follows:

Sec. 92. (a) The Department of Public Utility Counsel is created to promote the interests of residential utility customers. The department is not a department or division of the commission or of the railroad commission.

(b) The department shall maintain its principal office in the city of Austin.

(c) The chief executive officer of the department is the public utility counsel. The public utility counsel is appointed by the governor with the advice and consent of the senate to a two-year term that expires on February 1 of each odd-numbered year.

(d) The public utility counsel shall devote full time to the duties of the department to the exclusion of other employment and is entitled to receive compensation as provided by legislative appropriation.

Sec. 93. (a) To be eligible for appointment as public utility counsel, a person must be an attorney licensed to practice law in this state. Any conduct that is a ground for disbarment is a ground for removal of the public utility counsel from office, and any disbarment proceeding brought against that officer also constitutes a removal proceeding. If the public utility counsel is disbarred, the office becomes vacant.

(b) If the public utility counsel ceases to be authorized to practice law for a reason other than disbarment, he or she is subject to removal from office as provided by law.

(c) If disbarment or other removal proceedings are brought against the public utility counsel, he or she is suspended from office pending the outcome of the proceeding.

Sec. 94. The public utility counsel or department personnel representing the public utility counsel:

(1) may appear at proceedings of the commission or the railroad commission as the representative of residential utility customers on matters that the public utility counsel determines affect a substantial number of residential utility customers, and at those proceedings have the status of a party to a contested case under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes);

(2) may institute proceedings before the commission or the railroad commission on behalf of residential utility customers;

(3) may institute, intervene in, or otherwise participate in proceedings relating to regulation of public utilities in the state or federal courts or state agencies in the name of the department and on behalf of residential utility customers;

(4) may exercise the same powers as are granted to regulatory authorities under Section 29 of this Act;

(5) may gather and compile information concerning the ownership, financing, organization, conduct, practices, and management of public utilities and their affiliated interests;

(6) may publish information the public utility counsel considers of general interest to residential utility customers;

(7) shall submit an annual report to the governor, summarizing the department's activities, listing the department's expenditures, and setting forth information concerning the department's operations and the public utility industry as the public utility counsel considers of general interest; and

(8) may submit a report to regular sessions of the legislature containing suggestions for amendments or additions to the department's statutory authority or for the improvement of utility regulation in general.

Sec. 95. The commission and railroad commission, on request of the public utility counsel, shall allow department personnel to inspect documents, records, files, or other papers of the commission or railroad commission that relate to a public utility or an affiliated interest and shall provide copies of those papers without charge to the department.

Sec. 96. (a) The public utility counsel may hire or contract with other personnel and experts as are necessary for the efficient and effective operation of the department.

(b) The public utility counsel shall hire an assistant public utility counsel. The assistant public utility counsel shall perform the duties assigned by the public utility counsel and shall perform the duties of the public utility counsel when the public utility counsel is absent or unable to perform his or her duties or when the office is vacant. The assistant public utility counsel must be an attorney licensed to practice law in this state. If the assistant public utility counsel ceases to be authorized to practice law in this state, the public utility counsel shall terminate his or her employment.

Sec. 97. The Department of Public Utility Counsel is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), and unless continued in existence as provided by that Act the department is abolished, and Sections 92 through 97 of this Act expire effective September 1, 1991.

SECTION 3. Section 3, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Subsection (u) to read as follows:

(u) "Department" means the Department of Public Utility Counsel.

SECTION 4. Sections 6 (a) through (f), Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) To be eligible for appointment as a commissioner, a person must be a qualified voter, not less than 30 years of age, a citizen of the United States, and a resident of the State of Texas. No person is eligible for appointment as a commissioner or as the public utility counsel if at any time during the two-year period immediately preceding his appointment he personally served as an officer, director, owner, employee, partner, or legal representative of any public utility or any affiliated interest, or he owned or controlled, directly or indirectly, stocks or bonds of any class with a value of \$10,000, or more in a public utility or any affiliated interest. Each commissioner and the public utility counsel shall qualify for office by taking the oath prescribed for other state officers and shall execute a bond for \$5,000 payable to the state and conditioned on the faithful performance of his duties.

(b) A ~~No~~ commissioner, the public utility counsel, or an employee of the commission or the Department of Public Utility Counsel may not do any of the following during his period of service with the commission or the Department of Public Utility Counsel and for two years thereafter:

(1) have any pecuniary interest, either as an officer, director, partner, owner, employee, attorney, consultant, or otherwise, in any public utility or affiliated interest, or in any person or corporation or other business entity a

significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, but not including a nonprofit group or association solely supported by gratuitous contributions of money, property or services;

(2) own or control any securities in a public utility or affiliated interest, either directly or indirectly;

(3) accept any gift, gratuity, or entertainment whatsoever from any public utility or affiliated interest, or from any person, corporation, agent, representative, employee, or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, or from any agent, representative, attorney, employee, officer, owner, director, or partner of any such business entity or of any public utility or affiliated interest; provided, however, that the receipt and acceptance of any gifts, gratuities, or entertainment after termination of service with the commission or the Department of Public Utility Counsel whose cumulative value in any one-year period is less than \$100 shall not constitute a violation of this Act.

(c) The prohibited activities of this section do not include contracts for public utility products and services or equipment for use of public utility products when a member or an employee of the commission or the public utility counsel or an employee of the Department of Public Utility Counsel is acting as a consumer.

(d) A [No] commissioner or the public utility counsel or an employee of the commission or the Department of Public Utility Counsel may not directly or indirectly solicit or request from or suggest or recommend to, any public utility, or to any agent, representative, attorney, employee, officer, owner, director, or partner thereof, the appointment to any position or the employment in any capacity of any person by such public utility or affiliated interest.

(e) No public utility or affiliated interest or any person, corporation, firm, association, or business that furnishes goods or services to any public utility or affiliated interest, nor any agent, representative, attorney, employee, officer, owner, director, or partner of any public utility or affiliated interest, or any person, corporation, firm, association, or business furnishing goods or services to any public utility or affiliated interest may give, or offer to give, any gift, gratuity, employment, or entertainment whatsoever to any member or employee of the commission, the public utility counsel, or an employee of the Department of Public Utility Counsel except as allowed by Subdivision (3) of Subsection (b) of this section, nor may any such public utility or affiliated interest or any such person, corporation, firm, association, or business aid, abet, or participate with any member, employee, or former employee of the commission or the public utility counsel or an employee or former employee of the Department of Public Utility Counsel in any activity or conduct that would constitute a violation of this subsection or Subdivision (3) of Subsection (b) of this section.

(f) It shall not be a violation of this section if a member of the commission, ~~[or]~~ a person employed by the commission, the public utility counsel, or an employee of the Department of Public Utility Counsel, upon becoming the owner of any stocks or bonds or other pecuniary interest in a public utility or affiliated interest under the jurisdiction of the commission otherwise than voluntarily, informs the commission, the Department of Public Utility Counsel, and the attorney general of such ownership and divests himself of the ownership or interest within a reasonable time. In this section, a "pecuniary interest" includes income, compensation and payment of any kind, in addition to ownership interests. It is not a violation of this section if such a pecuniary interest is held indirectly by ownership of an interest in a retirement

system, institution, or fund which in the normal course of business invests in diverse securities independently of the control of the commissioner, public utility counsel, or employee.

SECTION 5. Section 6(h), Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) A [No] member of the commission or the public utility counsel may not seek nomination or election to any other civil office of the State of Texas or of the United States while he is a commissioner or the public utility counsel. If any member of the commission or the public utility counsel files for nomination for or election to any civil office of the State of Texas or of the United States, his office as commissioner or public utility counsel immediately becomes vacant, and the governor shall appoint a successor.

SECTION 6. Section 54(a), Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties, including the public utility counsel, and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

SECTION 7. Section 70, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 70. Except for the Department of Public Utility Counsel, any [Any] party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive, and who is a prevailing party in proceedings for review of a commission order or decision, may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harassment, the court may award to the defendant public utility the reasonable attorneys' fees.

SECTION 8. Section 73(a), Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any member of the commission, the public utility counsel, or any officer or director of a public utility or affiliated interest, shall be subject to a civil penalty of \$1,000 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of, the commission.

SECTION 9. Section 73(c), Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Any member, officer, or employee of the commission, the public utility counsel, or an employee of the Department of Public Utility Counsel found in any action by a preponderance of the evidence to have violated any provision of Section 6 of this Act shall be removed from his office or employment.

SECTION 10. Section 78, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 78. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund commission operation and operation of the Department of Public Utility Counsel.

SECTION 11. Within 30 days after the effective date of this Act, the governor shall appoint the public utility counsel to a term expiring February 1, 1981.

The amendment was read.

On motion of Senator Doggett and by unanimous consent, the amendment was withdrawn.

Question - Shall the bill as amended be passed to third reading?

**COMMITTEE ON HUMAN RESOURCES
GRANTED PERMISSION TO MEET**

On motion of Senator Brooks and by unanimous consent, the Committee on Human Resources was granted permission to meet while the Senate was in session.

(Senator Meier in Chair)

**COMMITTEE ON STATE AFFAIRS
GRANTED PERMISSION TO MEET**

On motion of Senator Moore and by unanimous consent, the Committee on State Affairs was granted permission to meet while the Senate was in session.

HOUSE BILL 585 ON SECOND READING

The Senate resumed consideration of **H.B. 585** on its second reading and passage to third reading.

Question - Shall the bill as amended be passed to third reading?

The bill as amended was passed to third reading by the following vote: Yeas 16, Nays 14.

Yeas: Andujar, Brooks, Creighton, Howard, Jones of Harris, Jones of Taylor, Kothmann, McKnight, Moore, Ogg, Parker, Schwartz, Snelson, Truan, Vale, Williams.

Nays: Blake, Braecklein, Clower, Doggett, Farabee, Harris, Longoria, Mauzy, Meier, Patman, Price, Santiesteban, Short, Traeger.

Absent: Mengden.

**COMMITTEE SUBSTITUTE SENATE BILL 764
ON SECOND READING**

Senator Longoria moved to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 764, Relating to the penalty for a violation of Chapter 77, Parks and Wildlife Code, relating to the taking of shrimp.

The motion prevailed by the following vote: Yeas 24, Nays 5.

Yeas: Andujar, Blake, Bracklein, Brooks, Clower, Doggett, Farabee, Howard, Jones of Taylor, Kothmann, Longoria, Mauzy, Meier, Ogg, Parker, Patman, Price, Santiesteban, Schwartz, Short, Snelson, Traeger, Truan, Vale.

Nays: Creighton, Harris, McKnight, Moore, Williams.

Absent: Jones of Harris, Mengden.

The bill was read second time and was passed to engrossment.

**COMMITTEE SUBSTITUTE SENATE BILL 764
ON THIRD READING**

Senator Longoria moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 764** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 4.

Yeas: Andujar, Blake, Bracklein, Brooks, Clower, Doggett, Farabee, Harris, Howard, Jones of Taylor, Kothmann, Longoria, Mauzy, Meier, Ogg, Parker, Patman, Price, Santiesteban, Schwartz, Short, Snelson, Traeger, Truan, Vale.

Nays: Creighton, McKnight, Moore, Williams.

Absent: Jones of Harris, Mengden.

The bill was read third time and was passed.

RECORD OF VOTE

Senator Williams asked to be recorded as voting "Nay" on the final passage of the bill.

MESSAGE FROM THE HOUSE

House Chamber
May 9, 1979

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I AM DIRECTED BY THE HOUSE TO INFORM THE SENATE THAT THE HOUSE HAS PASSED THE FOLLOWING:

S.J.R. 13 Proposing a constitutional amendment authorizing the legislature to provide for the guarantee of loans used to purchase farm and ranch real estate for qualified borrowers. (With amendments)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

**MOTION RELATIVE TO
LOCAL AND UNCONTESTED CALENDAR PROCEDURE**

Senator Howard made the following motion:

I move that the bills and resolutions listed on the Local and Uncontested Calendar be set as Special Order for 8:30 o'clock a.m. Thursday, May 10, 1979, and considered in the order listed, with the understanding that a bill or resolution removed from the Calendar will not be considered. I further move that the Three-Day Rule be suspended with respect to bills on the Local and Uncontested Calendar that are engrossed on Thursday, May 10, 1979.

The motion prevailed by the following vote: Yeas 31, Nays 0.

WELCOME AND CONGRATULATORY RESOLUTIONS

H.C.R. 96 - (Howard): Designating every fourth Friday in June as Fink Day in Texas.

S.R. 543 - By Truan: Extending congratulations to Gabriel Lozano, Sr.

S.R. 544 - By Truan: Extending congratulations to John G. Carlisle.

S.R. 545 - By Longoria: Extending welcome to the third grade class of Saint John's Episcopal Day School, McAllen.

S.R. 546 - By Moore: Extending congratulations to Mr. and Mrs. Raymond Arthur Sandel.

S.R. 547 - By Clower: Extending congratulations to Mrs. Manie Crenshaw.

S.R. 548 - By Clower: Extending welcome to Judge P. K. Reiter.

S.R. 549 - By Meier: Extending congratulations to Diana Oxford.

RECESS

On motion of Senator Moore the Senate at 4:53 o'clock p.m. took recess until 8:30 o'clock a.m. tomorrow.

APPENDIX

Sent to Governor

(May 9, 1979)

S.C.R. 67	
S.B. 123	S.B. 494
S.B. 142	S.B. 518
S.B. 156	S.B. 586
S.B. 218	S.B. 729
S.B. 259	S.B. 737
S.B. 288	S.B. 833
S.B. 301	S.B. 999
S.B. 387	S.B. 1186
S.B. 442	S.B. 1225
S.B. 447	S.B. 1257

Sent to Comptroller

(May 9, 1979)

S.B. 425

S.B. 1254

SIXTY-SEVENTH DAY

(Continued)

(Thursday, May 10, 1979)

AFTER RECESS

The Senate met at 8:30 o'clock a.m. and was called to order by Senator Jones of Harris.

LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Jones of Harris in Chair) announced that the time had arrived for the consideration of the Local and Uncontested Bills Calendar in accordance with the provisions of **S.R. 16**. (Bills having been set as Special Order and Constitutional Three-Day Rule suspended by vote of 31-0 on May 9, 1979.)

The following bills were laid before the Senate, read second time, amended (where applicable), passed to engrossment, read third time and passed. (Sponsor and vote on final passage indicated after caption of each bill. When amended, vote on final passage follows the amendment.)

C.S.S.B. 101 (Doggett) Texas Poison Prevention Packaging Act.

Senator Doggett offered the following amendment to the bill.

Amend CSSB 101 by amending Section 7 to read as follows:

SECTION 7. PENALTIES. (a) A person commits an offense if he fails to specifically label or specifically package any household substance in the manner provided for herein.

(b) As used in this section, "person" includes any individual, partnership, corporation, or association or legal representative or agent.

(c) An offense under this section is a Class B misdemeanor unless the person's intent is to defraud another, in which event the offense is a Class A misdemeanor.

The amendment was read and was adopted.

On motion of Senator Doggett and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (vv)

S.B. 196 (Truan) Relating to payments for the benefit of hard-to-place adopted children. (31-0)

S.B. 284 (Short) Relating to expulsion from institutions of higher education for foreign students who are convicted of certain offenses.

Senator Short offered the following committee amendment to the bill.

Amend S.B. No. 284 on line 13 by inserting "28.03, 28.04," between "Section" and "42.01".

The committee amendment was read and was adopted.

Senator Short offered the following committee amendment to the bill.

Amend S.B. No. 284, line 15 by adding a new paragraph to read as follows:

"SECTION 2. DEFINITIONS.
FINALLY CONVICTED means after all appeals have been exhausted."
and changing SECTION 2 of the printed bill to read SECTION 3.

The committee amendment was read and was adopted.

On motion of Senator Short and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

S.B. 864 (Howard) Relating to the joint construction, financing, operation, and management of a justice center on the State line by certain municipalities and counties in this State and in an adjoining state.

Senator Howard offered the following amendment to the bill.

Amend S.B. No. 864 as follows:

(1) Strike Subsection (c) on page 2 and substitute the following:
(c) A court of this state may not hold proceedings in the part of the center located in the other state. Courts of the other state may hold proceedings in the part of the center in this state.

(2) Add "and" after the semicolon on page 11, line 11.

(3) Place a period after "Act" on page 11, line 17, and strike the remainder of Section 9.

The amendment was read and was approved.

On motion of Senator Howard and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

S.B. 985 (Vale) Relating to educational requirements for jail personnel. (31-0)

S.B. 1260 (Snelson) Relating to voters whose names appear on the list of cancelled voter registrations. (31-0)

S.B. 1272 (McKnight) Relating to cases in the 241st District Court. (31-0)

S.B. 1282 (Jones of Taylor) Relating to creation of the Coryell City Water Supply District. (31-0)

S.C.R. 86 (Longoria) Granting Dr. Arthur G. Enns permission to sue the State of Texas. (vv)

H.B. 370 (Price) Authorizing certain counties to pay for autopsies conducted in another county.

Senator Price offered the following committee amendment to the bill.

Amend **H.B. 370**, page 1, line 21 by placing a period after the word "fee" on said line and striking the remainder of said sentence so that the amended sentence beginning on line 19 reads as follows:

"The County in which such autopsy is ordered shall pay the physician making such autopsy a reasonable fee."

The committee amendment was read and was adopted.

On motion of Senator Price and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

H.B. 500 (Harris) Relating to office hours of certain public officers on general election day.

Senator Harris offered the following committee amendment to the bill.

Amend H.B. No. 500 by striking added Subdivision 10 in Section 2 of the bill and substituting the following:

Subdiv. 10. OFFICE HOURS ON ELECTION DAY. The office of the county elections administrator shall remain open during the hours the polls are open on the day of any general election, primary election, or runoff primary election in which a statewide office appears on the ballot.

The committee amendment was read and was adopted.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (vv)

H.B. 511 (Mengden) Relating to county funding of water and sewer facilities.

Senator Vale offered the following amendment to the bill.

Amend House Bill No. 511 by deleting on line 6 page 1, the number "1,500,000" and substituting in lieu thereof the number "800,000."

The amendment was read and was adopted.

On motion of Senator Mengden and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

H.B. 550 (Price) Relating to the authority of certain counties regarding ownership and maintenance of cemeteries. (31-0)

H.B. 654 (Mengden) Relating to the authority of cities and counties to regulate the location of certain sexually oriented commercial activities. (31-0)

H.B. 844 (Andujar) Granting hospital authorities power to sell certain real property. (31-0)

H.B. 868 (Brooks) Relating to regulation of the planning, development, construction, modification and expansion of certain health care facilities and services. (31-0)

C.S.H.B. 1115 (Harris) Relating to the acquisition and use of certain facilities by the Alcoholic Beverage Commission. (31-0)

H.B. 1381 (Clower) Relating to the fees for testing instruments for weighing and measuring. (vv)

H.B. 1587 (Howard) Relating to bird hunting blinds in Harrison and Marion Counties. (vv)

H.B. 1672 (Mengden) Exempting certain persons from the bonding requirements of the Private Investigators and Security Agents Act. (31-0)

H.B. 1832 (Short) Relating to registration of certain vehicles used on highways only temporarily. (31-0)

H.C.R. 32 (Doggett) Granting Thomas, Richardson, Runden and Company, Inc., permission to sue the State of Texas. (vv)

H.C.R. 75 (Parker) Granting H. K. Lyde permission to sue the State of Texas. (vv)

BILLS REMOVED FROM LOCAL AND UNCONTESTED BILLS CALENDAR

Bill No.	Senators Objecting
C.S.S.B. 780	Snelson, Jones of Harris
C.S.S.B. 1248	Snelson, Jones of Harris

CONCLUSION OF SESSION FOR LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Jones of Harris in Chair) announced that the session for the consideration of the Local and Uncontested Bills Calendar was concluded.

ADJOURNMENT

On motion of Senator Moore the Senate at 8:41 o'clock a.m. adjourned until 10:30 o'clock a.m. today.

JOURNAL OF THE SENATE
of the
STATE OF TEXAS

REGULAR SESSION
of the
SIXTY - SIXTH LEGISLATURE

Convened January 9, 1979

Adjourned May 28, 1979



VOLUME II

Mrs. Margrette Vollers, Journal Clerk

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VOLUME II

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